

REMARKS

Reconsideration of the application in view of the above amendments and the following remarks is respectfully requested.

I. Status of the Claims

Claims 39-76 are pending in this application. In the Office Action mailed on February 6, 2008, claims 39-76 were rejected.

Claims 39-76 remain under prosecution.

II. Rejections Under 35 U.S.C. § 103

The Examiner rejected claims 39, 62 and 76 under 35 U.S.C. § 103(a) as being obvious over Kolawa, et al., United States Patent No. 6,370,513 (hereinafter “Kolawa”) in view of Cosentino, et al., United States Patent No. 6,290,646 (hereinafter “Cosentino”). The remaining claims are all dependent upon these three independent claims.

As stated in the previous response, each of the above claims requires the use of nutritional data in some form. Claim 39 requires: “obtaining nutritional data on each food item . . . evaluating a nutritional content of each food item . . . verifying a nutritional value of each of said plurality of recipes” and “making nutritional information associated with said menu sets available. . .” Claim 62 requires: “a food item database containing nutritional data on each food item used in said plurality of recipes . . . a computer-implemented arrangement for obtaining said nutritional data . . . a computer-implemented arrangement for evaluating a nutritional content of each food item . . . a computer-implemented arrangement for verifying a nutritional value of each

of said plurality of recipes based upon said verified nutritional values” and “a computer-implemented arrangement for making nutritional information associated with said menu sets available . . .” Claim 76 requires: “obtaining nutritional data on each food item . . . evaluating a nutritional content of each food item . . . verifying a nutritional value of each of said plurality of recipes” and “making nutritional information associated with said menu sets available. . .”

Each claim therefore requires that: the nutritional value of each recipe be verified, food attributes be assigned based upon the nutritional values and menu sets be shaped based upon the verified nutritional values. Nutritional values, as previously discussed, are the nutritional components of the type listed in the previous response, e.g., protein, fat, vitamins and minerals. The Examiner argues that Kolawa discloses the use of nutritional data in Col. 16, Line 29 - Col. 17, Line 33. The Examiner states that Kolawa analyzes food products such as sugars, fiber, calcium and the like to be a form of evaluating a nutritional content of each food item. Furthermore, the Examiner argues that the creation of product vectors for recommending dishes, which includes parsing an original recipe for ingredients and then mapping the chemical components making up the ingredients, teaches the claimed limitations identified above. Lastly, the Examiner argues that Kolawa teaches, at Col. 17, Lines 30-33 that the components are weighed as part of this analysis.

Applicant does not dispute that Kolawa makes an analysis of the food products. Applicant disputes the Examiner’s characterization of precisely what is being analyzed and what use is being made of that analysis. As previously stated, the claims require that nutritional values be analyzed and verified and menu sets be shaped based upon the verified nutritional values. The precise issue relates to the difference between nutritional value and taste value. The prior response identifies the primary motivations for Kolawa’s invention relating to establishing

menus based upon taste preferences. The Examiner states that Kolawa identifies the same types of food components as applicant as part of the analysis. Kolawa, however, evaluates only the **taste** characteristics of the components. A further reading of Col. 17, lines 21-34, as cited by the Examiner, states:

“If a record is found, the system searches the chemical database for a record corresponding to the ingredient. The system then multiplies the values in the ingredient vector with the weight/amount of the ingredient called for in the recipe. In addition, the system might multiply each field in the ingredient vector by the weight (scaling coefficient) assigned to the field. Chemical composition which make greater contributions to an ingredient’s **taste** and attribute are given higher weights than those that do not have much effect on neither taste nor attribute. For instance proteins and sugars are given a maximum possible weight (e.g. 100 in a scale of 0-100), while energy and calcium are given low weights (e.g. 0.1 in a scale of 0-100) (emphasis added).”

At line 58, Kolawa states further: “A recommendation engine 884 in conjunction with a search servlet acts to find recipes that will cater to an individual’s tastes.” Kolawa does not teach nor suggest the use of **nutritional value** for setting suggested meal plans. It suggests only that **taste** or the prediction of taste based upon the component analysis be considered. Taste is not a nutritional value, as defined by Applicant.

The Examiner takes issue with Applicant’s assessment of Cosentino. Applicant argued that Cosentino failed to teach making nutritional information available to food service professionals. The Examiner cites Col. 2, Lines 25-62 in support of her position. Applicant again disagrees. Col. 2 is identified as the background of the invention. It identifies the prior art and what is lacking in the prior art. The section cited by the Examiner specifically begins with: “[t]here is a need in the weight management profession for an apparatus and method capable of monitoring and transmitting physiological and wellness parameters . . .” The specification does identify the need for a device to permit overweight individuals to participate in a weight loss program with accurate weight monitoring at home. It further identifies the need for the weight

management professional to intervene and adapt the individual's diet based upon the weight information received. Cosentino does not, however, teach or suggest any method for providing nutritional information available to food service professionals. Cosentino does not teach or suggest making any nutritional information available to any third party professionals. The system merely provides accurate weight and EKG information to third party professionals.

With respect to the combination of Kolawa and Cosentino, Kolawa is directed toward a self-contained system that correlates food usage with taste preferences and outputs suggestions to the user. There is no physiological component nor is there any teaching or suggestion that the system might be utilized by participatory third parties. Cosentino is directed toward a diagnostic device which is designed to allow a remote third party user obtain an accurate weight of a patient, and possibly an EKG. A series of questions are posed to the user which may be answered on the screen of the device, solely for the use of the third party professional. A telephonic connection is also provided for conversation with the user. There is no teaching or suggestion of any modality for obtaining information from the user and providing suggestions or direction by the system itself. The third party professional may provide information to the user while in conversation on the scale. While the Kolawa reference does not teach any incorporation in a larger or more open system. The Cosentino reference similarly does not teach providing specific feedback to the user by the system itself based upon the inputs of the user. The combined teachings of these two references would not have suggested the claimed invention to those skilled in the art as there is no suggestion of any structure or rationale which would permit such combination. At most, the addition of a weight measurement component to the Kolawa is all that is suggested. Any more would constitute impermissible hindsight reconstruction.

CONCLUSION

Based on the foregoing remarks, Applicant respectfully submits that claims 39-76 are in condition for allowance.

Respectfully submitted,

METZ LEWIS LLC

By 

Barry I. Friedman, Reg. No. 33,695
11 Stanwix Street, 18th Floor
Pittsburgh, Pennsylvania 15222

Attorneys for Applicant

(412) 918-1100